January 29, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Roger Burch, President
Pacific States Industries, Inc.
P.O. Box 1300
Morgan Hill, California 95038

Zeke Sechrest, General Manager
Redwood Empire Sawmill
31401 McCray Road
Cloverdale, California 95425

Austin L. Vanderhoof
Agent for Service of Process
Pacific States Industries, Inc.
18625 Sutter Boulevard, Suite 900
Morgan Hill, California 95037

Roger Burch, Agent for Service of Process
North Cloverdale Boulevard, LLC
2 West Santa Clara Street, 9th Floor
San Jose, California 95113

Nolan Schweikl, Operations Manager
Redwood Empire Sawmill
P.O. Box 156
Cloverdale, California 95425

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Messrs. Burch, Schweikl, Sechrest and Vanderhoof:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at Pacific States Industries, Inc.'s ("Pacific States") Redwood Empire Sawmill facility located at 31401 McCray Road, in Cloverdale, California ("the Facility"). The WDID number for the Facility is 1 491006163. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters including Oat Valley Creek, the Russian River and the Pacific Ocean. This letter is being sent to you as the responsible owners, officers, and/or operators of the Facility. Unless otherwise noted, Pacific States Industries, Inc., North Cloverdale Boulevard, LLC, Roger Burch, Nolan Schweikl and Zeke Sechrest shall hereinafter be collectively referred to as "Pacific States."

This letter addresses Pacific States' unlawful discharges of pollutants from the Facility to Oat Valley Creek, the Russian River, and the Pacific Ocean. Pacific States is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("Permit"). Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Pacific States Industries, Inc., North Cloverdale Boulevard, LLC, Roger Burch, Nolan Schweikl and Zeke Sechrest are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Pacific States Industries, Inc., North Cloverdale Boulevard, LLC, Roger Burch, Nolan Schweikl and Zeke Sechrest under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the Permit. These violations are described more fully below.

I. Background.

A. The Clean Water Act.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The Permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). "Navigable waters" means "the waters of the United States" and includes, for example, traditionally navigable waters and tributaries to such waters. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2(c) and (e). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *U.S. v. Moses*, 496 F.3d 984, 990-991 (9th Cir. Aug. 3, 2007), *rehearing en banc denied* (2007).

CSPA is informed and believes, and thereupon alleges, that Pacific States has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since January 29, 2010 or earlier. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Pacific States is subject to penalties for violations of the Act since January 29, 2010.

B. Pacific States' Facility, Water Quality Standards, and EPA Benchmarks

The Facility is located at 31401 McCray Road in the City of Cloverdale and discharges directly to Oat Valley Creek, which flows to the Russian River, and ultimately to the Pacific Ocean. The Facility falls under Standard Industrial Classification (SIC) Codes 2411 ("Log Storage and Handling"), 2421 ("General Sawmill/Planing Mill") and 2499 ("Wood products, not classified elsewhere"). Pacific States submitted a Notice of Intent (NOI) to discharge under the Permit in 1992. CSPA's investigations into the industrial activities conducted on the Facility's approximately 24 acres indicate that the Facility is used to load and unload, process, store, and transfer lumber, wood products, and associated industrial materials. Pacific States collects and discharges storm water from the Facility through at least two (2) discharge points into Oat Valley Creek, which flows to the Russian River, and ultimately to the Pacific Ocean. Oat Valley Creek, the Russian River and the Pacific Ocean are waters of the United States within the meaning of the Clean Water Act.

The North Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for the Russian River and the Pacific Ocean in the "Water Quality Control Plan for the North Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean Waters of California" ("Ocean Plan"). The Ocean Plan "sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives." Ocean Plan at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." Basin Plan at 3-4.00. The Basin Plan also provides that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." Id. The Basin Plan also establishes that the dissolved oxygen levels of the stretch of the Russian River to which the Facility discharges may not be depressed below 7.0 mg/L. Basin Plan, Table 3-1. The Basin Plan sets forth water quality objectives for dissolved metals, such as arsenic, lead, and mercury. *Id.*, Table 3-4. The Basin Plan also states that the waters shall not receive sediment, settleable materials, or suspended materials that cause nuisance or adversely affect the waters' beneficial uses. Basin Plan 3-4.00. The Basin Plan further provides that dissolved oxygen levels in the Russian River will not exceed 7.0 mg/L. *Id.*

The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. *See* http://www.epa.gov/safewater/ mcl.html. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule ("CTR"), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); Chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); Copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and Lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the North Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.[1] Discharges of pollutants into a surface water body may be deemed a "contribution" to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the Permit was "subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead" under the CTR).

Under the Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by Pacific States: Total Suspended Solids – 100 mg/L; pH – 6-9 s.u.; Chemical Oxygen Demand – 120 mg/L; Biological Oxygen Demand – 30 mg/L; Zinc – 0.117 mg/L; and Magnesium – 0.0636 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for Total Organic Carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: Aluminum – 0.750 mg/L; Arsenic – 0.16854 mg/L; Copper – 0.0636 mg/L; Iron – 1.0 mg/L; Lead – 0.816 mg/L; Mercury – 0.0024 mg/L; Nitrate+Nitrite – 0.68 mg/L; Ammonia – 19.0 mg and Zinc – 0.117 mg/L.

The Permit requires Pacific States to analyze its storm water samples for Total Suspended

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[1] *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

Solids (TSS), pH, Specific Conductance (SC), and Total Organic Carbon (TOC) or Oil and Grease (O&G). Permit, Section B(5)(c)(i). Pacific States must also analyze storm water samples for Zinc (Zn) and Chemical Oxygen Demand (COD). (*Id.*, Section B(5)(c)(iii), Table D, Section A.)

II. Pacific States' Violations of the Permit.

Based on its review of available public documents, CSPA is informed and believes that Pacific States is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

A. Pacific States Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).

The Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the Permit provides: "Except as allowed in Special Conditions (D.1.) of this Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

Receiving Water Limitation C(1) of the Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Pacific States has discharged and continues to discharge storm water unacceptable levels of Total Suspended Solids, pH, Chemical Oxygen Demand, Biological Oxygen Demand, Total Organic Carbon, Magnesium and Zinc (and other pollutants, not adequately monitored) in violation of the Permit. These high pollutant levels have been documented during significant

rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Pacific States' Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/4/10	Discharge Point 1	TSS	140 mg/L	100 mg/L
3/15/11	Discharge Point 1	TSS	300 mg/L	100 mg/L
3/16/12	Discharge Point 1	TSS	140 mg/L	100 mg/L
3/20/13	Discharge Point 1	TSS	150 mg/L	100 mg/L
4/04/13	Discharge Point 1	TSS	140 mg/L	100 mg/L
2/26/14	Discharge Point 1	TSS	300 mg/L	100 mg/L
4/1/14	Discharge Point 1	TSS	230 mg/L	100 mg/L

2. Discharge of Storm Water Containing pH Levels Outside Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
11/30/12	Discharge Point 1	pH	5.9 s.u.	6.0-9.0 s.u.

3. Discharge of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/4/10	Discharge Point 1	COD	200 mg/L	120 mg/L
2/24/10	Discharge Point 1	COD	140 mg/L	120 mg/L
10/29/10	Discharge Point 1	COD	410 mg/L	120 mg/L
2/16/11	Discharge Point 1	COD	180 mg/L	120 mg/L
3/2/11	Discharge Point 1	COD	180 mg/L	120 mg/L
3/15/11	Discharge Point 1	COD	230 mg/L	120 mg/L
1/20/12	Discharge Point 1	COD	340 mg/L	120 mg/L
1/23/12	Discharge Point 1	COD	250 mg/L	120 mg/L
2/7/12	Discharge Point 1	COD	220 mg/L	120 mg/L
3/13/12	Discharge Point 1	COD	240 mg/L	120 mg/L
3/16/12	Discharge Point 1	COD	280 mg/L	120 mg/L
10/22/12	Discharge Point 1	COD	360 mg/L	120 mg/L
11/17/12	Discharge Point 1	COD	310 mg/L	120 mg/L
11/30/12	Discharge Point 1	COD	220 mg/L	120 mg/L
3/20/13	Discharge Point 1	COD	230 mg/L	120 mg/L
4/4/13	Discharge Point 1	COD	260 mg/L	120 mg/L
11/20/13	Discharge Point 1	COD	400 mg/L	120 mg/L

2/6/14	Discharge Point 1	COD	270 mg/L	120 mg/L
2/26/14	Discharge Point 1	COD	410 mg/L	120 mg/L
2/27/14	Discharge Point 1	COD	290 mg/L	120 mg/L
2/28/14	Discharge Point 1	COD	220 mg/L	120 mg/L
3/26/14	Discharge Point 1	COD	240 mg/L	120 mg/L
4/1/14	Discharge Point 1	COD	240 mg/L	120 mg/L

4. Discharge of Storm Water Containing Biological Oxygen Demand (BOD) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/4/10	Discharge Point 1	BOD	71 mg/L	30 mg/L
2/24/10	Discharge Point 1	BOD	40 mg/L	30 mg/L
10/29/10	Discharge Point 1	BOD	84 mg/L	30 mg/L
2/16/11	Discharge Point 1	BOD	55 mg/L	30 mg/L
3/2/11	Discharge Point 1	BOD	56 mg/L	30 mg/L
3/15/11	Discharge Point 1	BOD	41 mg/L	30 mg/L
1/20/12	Discharge Point 1	BOD	140 mg/L	30 mg/L
1/23/12	Discharge Point 1	BOD	89 mg/L	30 mg/L
2/7/12	Discharge Point 1	BOD	68 mg/L	30 mg/L
3/13/12	Discharge Point 1	BOD	83 mg/L	30 mg/L
3/16/12	Discharge Point 1	BOD	77 mg/L	30 mg/L

10/22/12	Discharge Point 1	BOD	100 mg/L	30 mg/L
11/17/12	Discharge Point 1	BOD	200 mg/L	30 mg/L
11/30/12	Discharge Point 1	BOD	67 mg/L	30 mg/L
3/6/13	Discharge Point 1	BOD	94 mg/L	30 mg/L
3/20/13	Discharge Point 1	BOD	59 mg/L	30 mg/L
4/4/13	Discharge Point 1	BOD	72 mg/L	30 mg/L
11/20/13	Discharge Point 1	BOD	160 mg/L	30 mg/L
2/6/14	Discharge Point 1	BOD	100 mg/L	30 mg/L
2/26/14	Discharge Point 1	BOD	71 mg/L	30 mg/L
2/27/14	Discharge Point 1	BOD	84 mg/L	30 mg/L
2/28/14	Discharge Point 1	BOD	68 mg/L	30 mg/L
3/26/2014	Discharge Point 1	BOD	83 mg/L	30 mg/L
4/1/2014	Discharge Point 1	BOD	70 mg/L	30 mg/L

5. Discharge of Storm Water Containing Total Organic Carbon (TOC) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/29/10	Discharge Point 1	TOC	112 mg/L	110 mg/L
10/22/12	Discharge Point 1	TOC	125 mg/L	110 mg/L
11/20/13	Discharge Point 1	TOC	145 mg/L	110 mg/L

2/27/14	Discharge Point 1	TOC	201 mg/L	110 mg/L

6. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/29/10	Discharge Point 1	Zn	0.15 mg/L	0.117 mg/L
2/16/11	Discharge Point 1	Zn	0.13 mg/L	0.117 mg/L
3/15/11	Discharge Point 1	Zn	0.26 mg/L	0.117 mg/L
1/20/12	Discharge Point 1	Zn	0.17 mg/L	0.117 mg/L
2/7/12	Discharge Point 1	Zn	0.12 mg/L	0.117 mg/L
3/13/12	Discharge Point 1	Zn	0.14 mg/L	0.117 mg/L
3/16/12	Discharge Point 1	Zn	0.14 mg/L	0.117 mg/L
10/22/12	Discharge Point 1	Zn	0.22 mg/L	0.117 mg/L
11/17/12	Discharge Point 1	Zn	0.12 mg/L	0.117 mg/L
3/20/13	Discharge Point 1	Zn	0.17 mg/L	0.117 mg/L
4/4/13	Discharge Point 1	Zn	0.15 mg/L	0.117 mg/L
11/20/13	Discharge Point 1	Zn	0.12 mg/L	0.117 mg/L
2/26/14	Discharge Point 1	Zn	0.38 mg/L	0.117 mg/L
4/1/14	Discharge Point 1	Zn	0.14 mg/L	0.117 mg/L

7. Discharge of Storm Water Containing Magnesium (Mg) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/4/10	Discharge Point 1	Mg	13 mg/L	0.0636 mg/L
2/24/10	Discharge Point 1	Mg	8 mg/L	0.0636 mg/L
10/29/10	Discharge Point 1	Mg	3.1 mg/L	0.0636 mg/L
12/22/10	Discharge Point 1	Mg	9.1 mg/L	0.0636 mg/L
2/16/11	Discharge Point 1	Mg	5.8 mg/L	0.0636 mg/L
3/2/11	Discharge Point 1	Mg	3.6 mg/L	0.0636 mg/L
3/15/11	Discharge Point 1	Mg	8.9 mg/L	0.0636 mg/L
1/20/12	Discharge Point 1	Mg	3.5 mg/L	0.0636 mg/L
1/23/12	Discharge Point 1	Mg	1.8 mg/L	0.0636 mg/L
1/23/12	Discharge Point RW1	Mg	9.8 mg/L	0.0636 mg/L
1/23/12	Discharge Point RW2	Mg	10 mg/L	0.0636 mg/L
2/7/12	Discharge Point 1	Mg	2 mg/L	0.0636 mg/L
3/13/12	Discharge Point 1	Mg	33 mg/L	0.0636 mg/L
3/16/12	Discharge Point 1	Mg	4.6 mg/L	0.0636 mg/L
10/22/12	Discharge Point 1	Mg	4.6 mg/L	0.0636 mg/L
11/17/12	Discharge Point 1	Mg	2.9 mg/L	0.0636 mg/L
11/30/12	Discharge Point 1	Mg	2.2 mg/L	0.0636 mg/L

3/06/13	Discharge Point 1	Mg	2.3 mg/L	0.0636 mg/L
3/20/13	Discharge Point 1	Mg	5.2 mg/L	0.0636 mg/L
4/04/13	Discharge Point 1	Mg	3.4 mg/L	0.0636 mg/L
11/20/13	Discharge Point 1	Mg	3.9 mg/L	0.0636 mg/L
2/6/14	Discharge Point 1	Mg	2.3 mg/L	0.0636 mg/L
2/26/14	Discharge Point 1	Mg	16 mg/L	0.0636 mg/L
2/27/14	Discharge Point 1	Mg	4.4 mg/L	0.0636 mg/L
2/28/14	Discharge Point 1	Mg	2.6 mg/L	0.0636 mg/L
3/26/14	Discharge Point 1	Mg	3.7 mg/L	0.0636 mg/L
4/1/14	Discharge Point 1	Mg	14 mg/L	0.0636 mg/L

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's investigations, including a review of Pacific States' analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Total Organic Carbon, indicates that Pacific States has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Chemical Oxygen Demand, Biological Oxygen Demand, Total Organic Carbon, Zinc, and Magnesium in violation of Effluent Limitation B(3) of the Permit. Pacific States was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Pacific States is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above sample data demonstrates that Pacific States' discharges adversely impact human health or the environment in violation of Receiving Water Limitation C(1) of the Permit, and that these discharges cause or threaten to cause pollution, contamination or nuisance in violation of Discharge Prohibition A(2). The above samples may also constitute violations of Receiving Water Limitation C(2) of the Permit, with respect to the discharge of parameters for which Pacific States has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits.

CSPA is informed and believes that Pacific States has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least January 29, 2010. CSPA alleges that such violations also have occurred and will occur on

other rain dates, including during every rain event at the Facility since January 29, 2010, in which 0.1 inches of rain or more has occurred, and that will occur, subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Pacific States has discharged storm water containing impermissible levels of Total Suspended Solids, pH, Chemical Oxygen Demand, Biological Oxygen Demand, Total Organic Carbon, Zinc, and Magnesium in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Pacific States is subject to penalties for violations of the Permit and the Act since January 29, 2010.

B. Pacific States Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). CSPA's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that Pacific States has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Chemical Oxygen Demand, Biological Oxygen Demand, Total Organic Carbon, Zinc, and Magnesium and other unmonitored pollutants in violation of Effluent Limitation B(3) of the Permit.

To meet the BAT/BCT requirement of the Permit, Pacific States must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Pacific States must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Pacific States has failed to adequately implement such measures.

Pacific States was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Pacific States has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. Pacific States is subject to penalties for violations of the Permit and the Act occurring since January 29, 2010.

C. Pacific States Has Failed to Implement an Adequate Monitoring & Reporting Program.

Section B of the Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Program by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. Wet Season is defined in the General Permit as the period from October 1 through May 30. Permit Section B(5)(a). All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, Specific Conductance, pH, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [Permit] Section B.2."

Based on their investigations, CSPA is informed and believes that Pacific States has failed to develop and implement an adequate Monitoring and Reporting Plan. As an initial matter, based on its review of publicly available documents, CSPA is informed and believes that Pacific States has failed to collect storm water samples during at least two qualifying storms events, as defined by the Permit, during at least three of the past five Wet Seasons. Furthermore, Pacific States has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Aluminum – 0.750 mg/L; Arsenic – 0.16854 mg/L; Copper – 0.0636 mg/L; Iron – 1.0 mg/L; Lead – 0.816 mg/L; Mercury – 0.0024 mg/L; Nitrate+Nitrite – 0.68 mg/L; Ammonia – 19.0 mg/L and Zinc -- 0.117 mg/L. Moreover, Pacific States has failed to employ adequate testing methods and adequate detection limits in violation of the Permit.

Each of these failures constitutes a separate and ongoing violation of the Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, Pacific States is subject to penalties for violations of the Permit and the Act since January 29, 2010. These violations are set forth in greater detail below.

1. Pacific States Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Three of The Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that Pacific States has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during three of the past five Wet Seasons, as required

by the Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

For the past three Wet Seasons, Pacific States has either reported that it did not sample the first qualifying storm event of the season or has falsely reported that it had sampled the first qualifying storm event of the season, when in fact Pacific States failed to do so. For example, Pacific States reported in its 2010-2011 Annual Report that it sampled the first qualifying storm event of the Wet Season, but Pacific States' first sample is from October 29, 2010. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2010-2011 Wet Season occurred as early as October 23, 2010, when 1.36" of rain fell on the Facility. These failures to adequately monitor storm water discharges constitute separate and ongoing violations of the Permit and the Act.

2. Pacific States' Failure to Analyze Storm Water Samples for All Required Constituents.

The Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Permit Section B(5)(c)(ii). CSPA is informed and believes that Pacific States has violated the General Permit by failing to analyze samples for pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility during the past five Wet Seasons including: Aluminum – 0.750 mg/L; Arsenic – 0.16854 mg/L; Copper – 0.0636 mg/L; Iron – 1.0 mg/L; Lead – 0.816 mg/L; Mercury – 0.0024 mg/L; Nitrate+Nitrite – 0.68 mg/L; Ammonia – 19.0 mg/L and Zinc -- 0.117 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the Permit and Clean Water Act. Accordingly, Pacific States is subject to penalties for these violations of the Permit and the Act since January 29, 2010.

3. Pacific States' Failure to Employ Adequate Testing Methods in Violation of the Permit Since January 29, 2010.

Pacific States is in violation of the Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." Permit Section B.10.a.iii.

The Regional Board has determined the appropriate laboratory test methods to employ when analyzing storm water samples for the presence and concentration of various pollutants, as well as the appropriate detection limits for those testing methods. However, in every single annual report filed by Pacific States in the past five years, the test methods and detection limits employed by the laboratory utilized by Pacific States to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with the Regional Board requirements. For example, the testing method Pacific States was required to apply for Chemical Oxygen Demand was SM 5220C with a detection limit of 1 mg/L. However,

in the Annual Report filed by Pacific States in 2013-2014 the laboratory utilized test method SM 5220D with a detection limit of 50 mg/L. Further, in the Annual Report filed by Pacific States in 2011-2012, the detection limits for Zinc and Magnesium were above the required detection limits by at least an order of magnitude. These are just a few of many examples of Pacific States' failure to adequately test for pollutants in their storm water discharges.

Pacific States is in violation of the Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." Permit, Section B.2.a. ("Monitoring Program Objectives").

CSPA is informed and believes that publicly available documents demonstrate Pacific States' consistent and ongoing failure to implement an adequate Monitoring and Reporting Program in violation of Section B of the Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Pacific States is subject to penalties for these violations of the Permit and the Act since January 29, 2010.

D. Pacific States Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) require dischargers who submitted an NOI pursuant to the Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Permit, Section A(4)); a list of significant materials handled and stored at the site (Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Permit requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that Pacific States has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Pacific States has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Pacific States has been in continuous violation of Section A(1) and Provision E(2) of the Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Pacific States is subject to penalties for violations of the Permit and the Act occurring since January 29, 2010.

E. Pacific States Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60 days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Pacific States is discharging elevated levels of Total Suspended Solids, pH, Chemical Oxygen Demand, Biological Oxygen Demand, Total Organic Carbon, Zinc, and Magnesium and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Pacific States was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60 days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Pacific States was aware of high levels of these pollutants long before January 29, 2010. Pacific States has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the Permit every day since January 29, 2010 and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Pacific States is subject to penalties for violations of the Permit and the Act occurring since January 29, 2010.

F. Pacific States Has Failed to File Timely, True and Correct Reports.

Section B(14) of the Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. Permit, Sections B(14), C(9), (10). Section A(9)(d) of the Permit requires the discharger to include in its annual report an evaluation of their storm water controls, including certifying compliance with the Permit. *See also* Permit, Sections C(9) and (10) and B(14).

CSPA's investigations indicate that Pacific States has submitted incomplete Annual Reports and purported to comply with the Permit despite significant noncompliance at the Facility. For example, Pacific States reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2009-2010, 2010-2011, 2011-2012 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect. For example, in the 2011-2012 Annual Report Pacific States reported that it sampled the first qualifying storm event of the Wet Season, but Pacific States' first sample is from January 20, 2012. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2011-2012 Wet Season occurred as early as October 3, 2011, when 0.85" of rain fell on the Facility. These failures to adequately monitor storm water discharges constitute separate and ongoing violations of the Permit and the Act.

Further, Pacific States failed to sample from qualifying storm events in two of last five Wet Seasons in violation of the Permit. For example in the 2010-2011 Annual Report Pacific States reported that it sampled from five qualifying storm events throughout the wet season. However CSPA is informed and believes none of those samples were taken during a qualifying storm event. For example, Pacific States reported that it sampled from a storm that occurred at the Facility on February 16, 2011. However based on publicly available rainfall data CSPA is informed and believes February 16, 2011was not a qualifying storm event because 0.24 inches of rain fell on the Facility on February 15, 2011. Thus, the February 15th storm event rendered any storm occurring for three days afterwards non-qualifying under the Permit.

These are but a few examples of how Pacific States has failed to file completely true and accurate reports. As indicated above, Pacific States has failed to comply with the Permit and the Act consistently for the past five years; therefore, Pacific States has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Pacific States submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years.

CSPA hereby notifies Pacific States that it intends to sue regarding all such violations. Pacific States' failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Pacific States is subject to penalties for violations of Section (C) of the Permit and the Act occurring since January 29, 2010.

IV. Persons Responsible for the Violations.

CSPA puts Pacific States Industries, Inc., North Cloverdale Boulevard, LLC, Roger Burch, Nolan Schweik, and Zeke Sechrest on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Pacific States Industries, Inc., North Cloverdale Boulevard, LLC, Roger Burch, Nolan Schweikl and Zeke Sechrest on formal notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067

VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
Megan Truxillo
John J. Prager
LAW OFFICES OF ANDREW L. PACKARD
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Email: Andrew@PackardLawOffices.com

Reed W. Super
Edan Rotenberg
SUPER LAW GROUP, LLC
411 State Street, #2R
Brooklyn, New York 11217
Tel. (212) 242-2355
Email: Reed@superlawgroup.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Pacific States Industries, Inc., North Cloverdale Boulevard, LLC, Roger Burch, Nolan Schweikl and Zeke Sechrest to a penalty of up to $37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Pacific States Industries, Inc., North Cloverdale Boulevard, LLC, Roger Burch, Nolan Schweikl and Zeke Sechrest and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Matthias St. John, Executive Officer
Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd Suite A
Santa Rosa, CA 95403-1072

ATTACHMENT A
Notice of Intent to File Suit, Pacific States Industries, Inc.
Significant Rain Events,* January 29, 2010 – January 29, 2015

January 29, 2010
February 4, 2010
February 6, 2010
February 9, 2010
February 12, 2010
February 24, 2010
February 26, 2010
February 27, 2010
March 3, 2010
March 9, 2010
March 11, 2010
March 12, 2010
March 25, 2010
March 29, 2010
March 30, 2010
March 31, 2010
April 2, 2010
April 4, 2010
April 5, 2010
April 11, 2010
April 12, 2010
April 20, 2010
April 27, 2010
April 28, 2010
May 10, 2010
May 17, 2010
May 27, 2010
October 23, 2010
October 24, 2010
October 28, 2010
October 29, 2010
November 7, 2010
November 20, 2010
November 21, 2010
November 22, 2010
November 23, 2010
November 27, 2010
December 2, 2010
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January 16, 2015

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.